direct the courts perhaps adopt an arbitrary way of reaching the result, for usually a vendor's lien only gives a right to have the property sold and the proceeds distributed. If, however, the value of the property is considerably less than the lien claim, the lienor can safely bid the property in for himself, as he will afterwards receive back all the purchase money. So when the father asks the court for a reconveyance, that relief is no more than a short cut to the proper result. Were the property much greater in value than the claim, a reconveyance would be hard to justify on the above principle, because of the son's right to the surplus. This question, however, has not yet come before the courts. In recent years the practice of granting some form of equitable relief on default by the son has become more common, and it now seems likely to find a permanent place in our law. It is to be hoped that soon its fundamental principles will be defined, and the doctrine placed on a sound basis.

THE RIGHTS OF A BENEFICIARY UNDER A CONTRACT. — In most American jurisdictions a beneficiary not a party to a contract may always sue; in England and in some few of the United States such a beneficiary can never sue. In New York a beneficiary can sue by exception where lineal relationship exists between promisee and beneficiary. In New York also there is the rule of *Lawrence* v. *Fox*, 20 N. Y. 268: when a promise looks to the satisfaction of a claim of a third party against the promisee such a quasi-beneficiary may sue. All of this law was involved in a recent decision of the New York Court of Appeals. The defendant entered into a contract with the husband of the plaintiff whereby the husband was to aid the defendant in overthrowing a clause of a will; and in event of success the defendant was to pay the wife, the plaintiff, $50,000. The husband gave the required assistance; the will was broken; but the defendant refused to pay. Upon appeal, the court by a vote of four to three allowed the plaintiff to succeed. *Buchanan* v. *Tilden*, 52 N. E. Rep. 724.

The majority insisted that the wife was within the exception of near relationship; and further the majority seem to decide that the obligation of the husband to support the wife enabled her to sue. As to the first reason: that idea is to be traced to the decision in an ancient case that a child might sue upon a promise made to its father for its benefit. *Dutton* v. *Poole*, 1 Vent. 318. The proposition of that case, although overruled in England, has survived in New York. The further step now taken by the majority in assimilating the case of husband and wife to the case of parent and child would be a fair one if the doctrine of the exception had any basis in theory or in policy; but such does not appear. So the court might well have refused to extend it. As to the second reason: the case did not come within the rule of *Lawrence* v. *Fox*, *supra*. The obligation of the husband to support the wife was not a claim upon which an action could be brought; nor did the promise look to the discharge of that obligation. *Durnherr* v. *Rau*, 135 N. Y. 219.

Now upon any modern conception of a promise and of a contract the one to whom the promise is made and from whom the consideration moves has alone the legal right to sue. And yet the rule allowing a beneficiary to sue reaches a most just result. In such case one looks to equity. In equity the rights of most beneficiaries are seen to be recognized and enforced. Why not of these beneficiaries? And if the beneficiary were allowed a bill for the specific performance of the promise in his behalf

against promisor and promisee an adequate remedy would be provided. There would then be an end of the illogicality and circuity now attending the actions of the beneficiary at law. Again, the rule of *Lawrence* v. *Fox*, *supra*, allowing a creditor to sue upon a promise made to the debtor to pay the debt, is likewise indefensible in theory, just in effect, and referable to equity. For, by creditor's bill the creditor might well enough proceed against debtor and obligor to secure the benefit of the obligation as a valuable asset of the debtor. It is, then, to be regretted that the principal case only adds to the confusion as to the rights of the beneficiary at law and suggests no solution of the general problem.

SMUGGLING DEFINED. — When a penal statute describes a crime by a single word, the definition of that crime will be for the courts. So under United States Revised Statutes, § 2865, as to the crime of smuggling, — an authoritative definition of that crime remained for the United States Supreme Court at the present sitting. *Keck* v. *United States*, 19 Sup. Ct. Rep. 254. A package of diamonds intended to be smuggled was seized by a revenue officer in the stateroom of a steamer after she was moored at her dock. Upon appeal, the court, by a vote of four to three, held these facts insufficient to justify a conviction upon an indictment for smuggling, as the goods were not actually unladen and brought past the barrier of the customs without payment of duties. The minority insisted that the act of smuggling was complete when the goods were brought within the waters of the port with intent to land them without payment of duties. This difference of opinion is natural, for no provision of the statute delimits the crime. Smuggling, indeed, has a well accepted import in English law. The English revenue statutes from an early date have distinguished between smuggling — the act of landing goods unlawfully — and the various acts which might precede or follow it. But in the United States the revenue statutes, until 1842, forbade all such acts indiscriminately, and made no mention of smuggling by name. The main argument of the majority has then much force: that the present statute of 1842, by providing, in a separate clause paraphrasing the English statute, for the punishment of smuggling as the "clandestine introduction of goods," thereby adopted the English definition. *United States* v. *Dry Goods*, 17 How. 85. But further, the construction of the minority fails to stand the test of the most familiar canon governing statutory interpretation, that all the provisions of the law must be read as a whole. The view of the minority is then seen to involve a fatal dilemma: although they contend that the offence was complete the moment the concealed goods arrived within the waters of the port; yet they are obliged to concede that, under the statute, if the duties were subsequently paid before passing the customs, no offence would have been committed. This contention and this admission are wholly irreconcilable. If a subsequent act becomes necessary to determine whether an offence has been committed, it cannot be said in reason that the offence is at first complete. For it is fundamental in criminal law that all the elements of a crime must co-exist, and that when a crime is thus complete nothing subsequent can purge it. The decision reached by the majority in the principal case is, then, most sound statutory construction. Nor is there any practical argument the other way. The acts done in the principal case were punishable under the revenue laws had the indictment been rightly drawn. But as the law stood they did not constitute smuggling.